



GOVERNMENT OF KERALA

Abstract

Local Self Government Department – Judgment of the Hon'ble High Court dated 11/04/2019 in WP(C) No.22542/2017 filed by Sri.Renji Thomas – Complied with - Orders issued.

LOCAL SELF GOVERNMENT (DD) DEPARTMENT

G.O.(Rt)No.2208/2019/LSGD Dated,Thiruvananthapuram, 09/10/2019

Read 1 Representation of Sri.Renji Thomas dated,03.07.2017

2 Judgment dated,11/04/2019 in WP(C) No.22542/2017 filed by Sri.Renji Thomas

3 Letter No. Engg.(DB 4)/3380/2012/KSRRDA dated 20-07-2019 from the Chief Engineer, KSRRDA.

ORDER

Sri.Renji Thomas entered into an agreement for the construction of a 2km road under PMGSY-2008-09, Phase VII, Package No.KR 11-28A in Mallappally Block, Pathanamthitta District. But he did not start the work in terms of agreement and therefore he was terminated from the contract at the risk and cost of the contractor. He was directed to pay an amount of Rs.2,49,54,588/-(Two crore, fourty nine lakh, fifty four thousand , fivehundred eightyeight only) already sanctioned and revenue recovery proceedings were initiated against him. Sri.Renji Thomas has approached the Hon'ble High Court vide WP(C) No.22542 of 2017 where the Hon'ble court, as per the Judgment read as 2nd paper above, directed the Government to dispose the representation read as 1st paper above after providing an opportunity of hearing.

2. Accordingly the petitioner was heard by the Government on 06-09-2019. He expressed his willingness/desire to carry out the work if the estimate is revised with GST. But he did not forward any specific substantiating reason for not completing the work within the stipulated time though all assistance were given during the period. The main argument of the petitioner for not completing the work was the dispute/resentment arose among the public regarding the take over of land for the projects and the department did not intervene to tide over the situation. It was also contended by him that no

communications were sent to him owing his change of address following an accident, from the authorities directing to restart the work and the Department unilaterally proceeded with revenue recovery proceedings. He is also of the view that the Superintending Engineer, KSRRDA is not competent to fix the liability as he was a party to the agreement.

3. The contentions of the petitioner raised in the hearing were examined in detail with reference to the records available and the inputs offered by the Superintending Engineer, KSRRDA. The argument of the petitioner that the sufficient land was not available in the site and the public were hesitant to hand over the same is not at all convincing as such a chance is likely to be remote under PMGSY schemes. The issue of non receipt of communication was also perused and it is found that he had received such a direction from the authorities on 19-06-2014 by hand asking him to restart the work. Moreover CE, KSRRDA has also reported that they were quite unaware either of his change of address or his accident. As there is a blatant breach of contract in this regard, the CE has also vindicated that the employer (here SE, KSRRDA) has the absolute power to terminate the contract under clause 4.52, 236 of the said agreement.

5. While examining the request of the petitioner for a further award of work in the light of the Judgement, Government is doubtful about the logistics of the petitioner in carrying out the work which has been apparently revealed at the time of hearing . His fresh argument that he is willing the complete the work in the revised rate with GST which is in contravention of the averments in Writ petition seems to be a lame excuse on the part of him. Since the project belong to PMGSY scheme of Government of India in which execution has to be completed before 31-03-2020, then only State Government could get more funds and projects under the Scheme and Government cannot lag the work further in any context. The Department has already re-tendered the balance portion of the work which is yet to be awarded due to the tender excess and hence the claim of the petitioner for a further award of work with revised rate is devoid of merit and liable to be rejected.

6. In the above circumstances, Government have examined the matter in detail and order that the demand of the petitioner for a further award of work cannot be considered in view of the blatant breach of contract committed by him whereby Government and public suffered a huge loss. Since the balance work has already been re-tendered, his demand has become infructuous and his representation as per the letter read as 1st paper above disposed accordingly as it is lacked with any merit.

The direction contained in the Judgement read as 2nd paper above is thus complied with.

(By order of the Governor)
BIJUKUTTAN.M.S
ADDITIONAL SECRETARY

To:

Advocate General, Ernamkulam (with C/L)

The Chief Engineer, KSRRDA

Sri.Renji Thomas, Kaloorth House, Puthenpeedika, Omallur P.O,
Pathanamthitta District

Accountant General (Audit/ A&E), Kerala, Thiruvananthapuram

Web&New media, I&PRD

✓ Excecutive Director, IKM

Stock File

Forwarded /By order

Signature valid

Digitally signed by SAM N
Date: 2019.10.06 16:17:42 IST
Reason: Approved

Section Officer